GREAT WESTERN PETROLEUM AND REFINING CO.

IBLA 91-385 Decided August 19, 1992

Appeal from a decision of the California State Office, Bureau of Land Management, declaring oil and gas leases terminated by cessation of production. CAS 066405; CAS 066405A.

Set aside and remanded.

1. Oil and Gas Leases: Expiration--Oil and Gas Leases: Extensions--Oil and Gas Leases: Termination

   An oil and gas lease in its extended term by reason of production which embraces a well capable of producing oil or gas in paying quantities expires by operation of law when production ceases and, thereafter, the lessee fails to produce the well upon 60 days' notice to place the well in production. Termination of the lease by operation of law in such circumstances is properly distinguished from cancellation of an oil and gas lease for violation of the lease terms, regulations, or statutes. No judicial action is required to effect termination by operation of law.

2. Bankruptcy Code: Automatic Stay--Oil and Gas Leases: Expiration--Oil and Gas Leases: Termination

   An oil and gas lease in its extended term by reason of production which embraces a well capable of producing oil or gas in paying quantities expires by operation of law when production ceases and, thereafter, the lessee fails to produce the well upon 60 days' notice to place the well in production. Termination of the lease in such circumstances occurs by operation of law and does not involve any judicial or administrative proceeding. Accordingly, the termination of the lease does not involve an action or proceeding against the debtor or an act to obtain property of the debtor which would be barred by the automatic stay provided by the Bankruptcy Code, 11 U.S.C. § 362(a) (1988), upon the filing of a petition in bankruptcy.

3. Bankruptcy Code: Confirmation of Plan--Oil and Gas Leases: Bonds--Oil and Gas Leases: Expiration--Oil and Gas Leases: Termination

Confirmation by the bankruptcy court of a plan of reorganization under chapter 11 of the Bankruptcy Code is binding on both the debtor and the creditors. Although BLM has the authority by regulation to increase the amount of bond coverage required of an oil and gas operator, an order of the bankruptcy court confirming the plan of reorganization of a Federal oil and gas lessee which expressly bars an increase in bond cover-age as a condition of production is binding on the Department in the absence of modification thereof. A finding that an oil and gas lease in its extended term by reason of production terminated automatically for failure to produce lease wells within 60 days of notice to do so will be remanded where production was conditioned upon increased bond coverage expressly barred by order of the bankruptcy court.

Pardee Petroleum Corp., 98 IBLA 20 (1987), overruled in part to the extent inconsistent herewith.

APPEARANCES: Jack M. Winters, President, Great Western Petroleum and Refining Company, Houston, Texas, for appellant; Burton J. Stanley, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Great Western Petroleum and Refining Co. has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated June 7, 1991, declaring oil and gas leases CAS 066405 and CAS 066405A to have terminated by reason of cessation of production. Lands embraced by these leases were formerly included within a single lease, SAC 066405, which issued effective June 1, 1961, for a term of 10 years and for so long thereafter as oil or gas is produced in paying quantities. See 30 U.S.C. § 226(e) (1988). After segregation of SAC 066405, leases CAS 066405 and CAS 066405A retained the provisions of the original lease. The leases have been held by production since 1965 and 1967, respectively.

These leases have been involved in a protracted history of litigation, both administrative and judicial. Some knowledge of the background is helpful to an understanding of the issues raised by this appeal. By decision dated July 17, 1979, BLM recognized Pardee Petroleum Corporation (Pardee) and Energy Dynamics, Inc. (EDI), as the holders of record title in these leases to the extent of their interest in the leases (60 percent and 40 percent, respectively) determined as a result of judgments entered in litigation in state and Federal court. That BLM decision also recognized Pardee

as the holder of 100 percent of the operating rights in the leases in accordance with the litigation. 1/

1/ Appellant's interest in these leases is not altogether clear from the record, and this fact has prompted BLM to file a motion to dismiss for lack of standing. BLM asserts that it has been unable to find any order approving an assignment or transfer of the leases to appellant.

Appellant has opposed this motion, asserting that title to these leases was vested in International Metals and Petroleum Corporation (IMPC) by order of the bankruptcy court (presumably a reference to the Order Confirming Plan signed by Judge E.A. Thompson, In the Matter of International Metals & Petroleum Corp., No. 185-01069, and consolidated cases, Energy Dynamics, Inc., No. 185-01106, and Pardee Petroleum Corp., No. 185-01105 (Bankr. E.D. Cal. (Jan. 6, 1987)). This order held that "[t]itle to oil and gas leases #SAC 066405, #SAC 066405-A, and #SAC 021009(b) are vested in IMPC free and clear of all liens and encumbrances." Appellant states that, prior to this order, IMPC changed its name to Great Western Petroleum Company. A copy of a certificate of amendment, dated May 15, 1985, purporting to effect this change is offered by appellant.

In reply, BLM notes that this certificate is neither certified nor authenticated and that the name change appears not to have been recognized by the bankruptcy court in the Order Confirming Plan, issued almost 2 years after the name change. BLM charges that this certificate is nothing but a self-serving document recently manufactured by appellant for the purpose of pursuing this appeal.

Our review of BLM's motion and the pleadings reveals that although appellant traces its title in leases CAS 066405 and CAS 066405A to IMPC and IMPC's subsequent name change, the name apparently chosen by IMPC (Great Western Petroleum Company) is not identical to appellant's name. A possible explanation for this difference is found in the bankruptcy petition filed by appellant on June 29, 1990, In re Great Western Petroleum & Refining Co., No. 190-03159A-11K (Bankr. E.D. Cal.) (subsequently transferred as No. 90-01618-C-11 (Bankr. E.D. Texas)). This petition lists Great Western Petroleum Company as one of the names that appellant used in doing business (Statement of Reasons (SOR), Aug. 6, 1991, at 4). No explanation is given why appellant filed a second bankruptcy petition during the asserted pendency of the plan approved in the prior bankruptcy proceeding.

On the basis of the record before us, we find that the facts support appellant's assertion of standing in the instant appeal. The unapproved assignee of a Federal oil and gas lease has been held to have standing to appeal a decision finding the lease to have terminated. Tenneco Oil Co., 63 IBLA 339 (1982). Although the assignment to IMPC of record title to the subject leases has never been approved by BLM pursuant to 30 U.S.C. § 187a (1988), it appears that IMPC and appellant have an interest in the lease sufficient to establish standing to appeal. It is not enough for BLM to disparage appellant's certificate of amendment without setting forth the standards that the certificate is claimed to have violated. BLM's motion to dismiss is, accordingly, denied.

Citing a history of noncompliance with the regulations governing operations on these leases, 2/ Pardee and EDI were notified by letter of January 30, 1981, from the Deputy Conservation Manager, Oil and Gas, Western Region, Geological Survey (GS), 3/ that they were required to file monthly reports timely, notify GS prior to shipment of oil so that shipments can be witnessed, and pay royalty timely. The letter indicated that noncompliance would result in a requirement to shut in the wells on the leases pending compliance. Subsequently, by letter from GS dated April 16, 1981, Jack Winters, President of EDI and principal of Pardee, was ordered to shut in all producing wells on the leases. The letter cited the failure to file the requested delinquent reports and the breaking of Government seals to remove production without notice to GS officials.

The shut-in order was appealed within GS and was thereafter lifted effective August 6, 1981. By letter dated January 28, 1982, Pardee was given 60 days to either commence operations on the shut-in wells or provide evidence that wells on the leases are capable of production in paying quantities. Subsequently, BLM notified Pardee and EDI in a decision dated May 11, 1982, that the leases had terminated for failure to comply with the 60-day notice. In view of the termination of the leases, the decision also declined to act on a request for approval of assignment of record title to the leases which had been filed with BLM by IMPC on April 15, 1981.

Pardee responded by filing suit against the Department in the United States District Court. In September 1984 this litigation was settled by stipulation of the parties providing that the leases shall be considered in good standing as of May 1982 and that Pardee and EDI shall have 60 days from receipt of notice to place the wells in paying production. Under the stipulated settlement, Pardee/EDI also agreed to pay within 30 days all back payments due to the United States from operation of the lease, clean up the well sites, and notify BLM officials prior to removal of oil from the sites to allow BLM to verify the amount of oil sold.

It appears from the record that oil was removed from the leases on various dates from July 1984 through February 1985 for which the royalties due the Government were not timely paid. As a consequence, by letter dated May 10, 1985, a royalty assessment was issued by MMS officials billing Pardee for unpaid royalty in the amount of $14,110.62.

2/ Aspects of noncompliance referred to included failure to file reports, breaking of Federal seals on shipping facilities, failure to notify Interior Department officials of intent to ship oil in order to permit witnessing the transaction, and nonpayment of Federal royalty.

3/ Responsibility for regulation of oil and gas operations on onshore leases was subsequently transferred within the Department of the Interior from GS to BLM. Secretarial Order No. 3071, 47 FR 4751 (Feb. 2, 1982); Secretarial Order No. 3087, 48 FR 8983 (Mar. 3, 1983). Responsibility for collection of royalties on oil and gas leases was transferred from GS to the Minerals Management Service (MMS). Id.

Thereafter, by decision dated May 31, 1985, BLM required Pardee to increase the amount of its statewide oil and gas bond coverage to $79,000, citing outstanding unpaid royalty obligations and the projected costs of abandonment of well and production facilities on the leases. Further, the BLM decision suspended consideration of the assignment of record title in the leases from Pardee and EDI to IMPC on the ground IMPC was not shown on the records of the California Secretary of State to be a corporation in good standing in the State of California. This decision was the subject of a prior appeal to this Board by Pardee. On appeal the increased bonding requirement was upheld by the Board and the rejection of the assignment to IMPC was set aside and remanded in a decision cited as Pardee Petroleum Corp., 98 IBLA 20 (1987).

In the meantime, documents tendered to the Board in connection with the present appeal show that petitions were filed by Pardee, EDI, and IMPC pursuant to chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1101-1146 (1988), in the U.S. Bankruptcy Court for the Eastern District of California. 4/ The Order Confirming Plan, entered January 6, 1987, by Judge E.A. Thompson of the United States Bankruptcy Court for the Eastern District of California specifically addressed the interests of the debtors in the subject leases in the following terms:

> 8. Title to oil and gas leases #SAC 066405, #SAC 066405-A, and #SAC 021009(b) are vested in IMPC free and clear of all liens and encumbrances; and
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> * * * * * * *
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> 12. Reorganized debtor shall produce, ship, sell or drill oil wells and shall not be required by the Bureau of Land Management to place new or additional bond with the Bureau of Land Management; and * * *. [5/]

In response to the prior Board decision upholding the bond requirement, BLM directed Pardee by letter of December 3, 1987, to promptly file bond coverage in the amount of $79,000 or shut in the wells on the leases. By letter dated December 28, 1987, Pardee responded that it had not received notice of the Board's decision. 6/ For the first time, Pardee apparently

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4/ See note 1, supra. It appears that the petitions of Pardee and EDI were filed May 2, 1985. The petition of IMPC was apparently filed shortly before this on Apr. 29, 1985.

5/ The Board was not informed of this order while the prior appeal by Pardee was pending.

6/ Appellant and its predecessors in interest have changed addresses numerous times during the course of administrative proceedings causing many key communications from the Department to be returned by the post office as undeliverable. Thus, the Board's prior decision in this matter which was mailed to appellant's address as shown in the statement of reasons for appeal was returned by the post office marked: "Moved, not forwardable."

included a copy of Judge Thompson's order of January 6, 1987. Upon receipt of Pardee's reply, BLM took the position that the United States received no notice of and was not a party to the bankruptcy proceeding. 7/ Hence, BLM found in a letter dated January 28, 1988, that it was not bound by the order and directed Pardee to cease production on the leases until it provided the required bond. Pardee responded in a letter dated February 8, 1988, asserting that the BLM shut-in notice was a nullity in view of the order of the bankruptcy court.

The case file indicates that these lease accounts are still not in good standing. By decision dated October 11, 1989, BLM advised Pardee and sureties providing oil and gas bonding for the leases that according to officials of MMS unpaid invoices totalling $15,053.28 were still outstanding. 8/

Recognizing that the leases in their extended term by reason of production were shut in at the time, BLM informed appellant by notice dated March 11, 1991, that the leases would terminate by operation of law if appellant did not within 60 days furnish the required $79,000 bond coverage and return the leases to production, commence reworking or drilling, or seek suspension of the leases. In issuing this notice, BLM relied upon regulations 43 CFR 3107.2-2 and 3107.2-3. 9/

Appellant's sole response to BLM's notice was set forth in a letter dated May 29, 1991, beyond the 60-day period set forth in BLM's notice.

7/ It appears that notice of the meeting of creditors and of the automatic stay of proceedings against the debtor under 11 U.S.C. § 362(a) dated Aug. 13, 1985, was served upon MMS (the royalty collection agency of the Interior Department) at a Denver, Colorado, address, rather than upon BLM, the Interior agency responsible for management of oil and gas lease operations and bonding requirements. See 43 CFR Subpart 3104, Part 3160.

8/ Records now before the Board indicate that this amount was subsequently collected from the surety companies providing a bond for appellant's operations. See Memorandum of Aug. 16, 1990, from Chief, Fiscal Accounting Division, MMS, to Director, California State Office, BLM. However, it appears that other claims for late payment charges and minimum royalty are still pending.

9/ Regulation 43 CFR 3107.2-2 states in part: "A lease which is in its extended term because of production in paying quantities shall not termi-nate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction."

Regulation 43 CFR 3107.2-3 states in part:

"No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so."

In this letter, appellant pointed out that it was under the protection of Chapter 11 of the Bankruptcy Code and that the bankruptcy court had previously issued an order stating that no additional bond was required. Appellant further advised that it had been previously determined that the leases could only be cancelled by judicial action.

Subsequently, BLM issued the June 7, 1991, decision which is the subject of this appeal. That decision found that no action had been taken to restore production on the leases as required by the March 11 notice and, hence, the term of both leases had expired by reason of cessation of production. In addition to finding that no production was occurring from the leases, BLM's decision commented upon appellant's May 29 response. The decision stated that the United States Attorney had advised that the bankruptcy court order of January 6, 1987, was not effective against the United States because the United States was not a party to that action. In any case, BLM held, the order discharged the debtor from bankruptcy court and, therefore, the bankruptcy court no longer afforded protection to appellant.

In its SOR, appellant asserts that the leases were transferred to Great Western Petroleum and Refining Company by order of the bankruptcy court. Appellant again asserts that it is in bankruptcy, this time referring to the voluntary petition filed on June 29, 1990, in the United States Bankruptcy Court. See note 1, supra. Appellant contends this filing triggers the automatic stay of 11 U.S.C. § 362(a) (1988), and that the effect of the stay is to prevent the loss of property in which the debtor claims an interest. Appellant argues that parties wishing to take action regard-ing such property are required to obtain relief from the stay or a judicial determination that the debtor lacks an interest in the property. As BLM has failed to do either, its contention that the leases terminated of their own accord is asserted to be inappropriate (SOR, Aug. 6, 1991, at 2).

Appellant also argues that BLM incorrectly determined that leases CAS 066405 and CAS 066405A had terminated for want of sufficient bond. This bond requirement was waived, appellant states, by Judge Thompson's Order Confirming Plan. The United States Attorney's conclusion that BLM was not a party to the proceedings before Judge Thompson was likewise incorrect, appellant contends. The sole authority to determine who is a party in a bankruptcy proceeding is the presiding bankruptcy judge (SOR at 2). Any contrary result would violate the automatic stay provision of 11 U.S.C. § 362(a) (1988), which binds BLM as well as any other creditor. Id.

Finally, appellant argues that cancellation or termination of a lease producing, or capable of producing, hydrocarbons in paying amounts requires judicial action. Hence, appellant contends that administrative adjudication is not sufficient to effect this result.

Counsel for BLM filed a motion for expedited consideration of this appeal. In support of the motion, counsel filed affidavits of BLM employ-ees setting forth the environmental damage occurring and threatened on these

leases pending resolution of this appeal. 10/ Appellant, asserting that any environmental damage which has occurred is the result of the improper BLM shut-in order, concurred in the request for expedited review. Accordingly, the motion for expedited review was granted by order of the Board dated April 15, 1992.

This appeal raises several issues. The first is whether the termination of an oil and gas lease in its extended term by reason of production as a consequence of the cessation of production from the lease requires filing an action in the United States District Court. A further issue is whether the automatic stay provided by the Bankruptcy Code, 11 U.S.C. § 362 (1988), precludes an oil and gas lease in its extended term by reason of production from terminating for cessation of production following the filing of a petition under chapter 11 of the Bankruptcy Code. An additional issue presented by the facts of this case is whether the Department is bound by the terms of the order of the bankruptcy court confirming the plan of the debtor with respect to a Federal oil and gas lease held by the debtor as lessee and,
if so, whether the BLM 60-day notice to produce was vitiated by conditioning the lessee's right to produce the leases on the provision of increased bonding.

[1] Cancellation of a Federal oil and gas lease based upon a determination by Departmental officials that the lessee has failed to comply
with the terms of the lease, applicable statutes, or with the regulations promulgated thereunder is properly distinguished from termination of the
oil and gas lease by operation of law. Oil Resources, Inc., 28 IBLA 394, 405, 84 I.D. 91, 96 (1977). 11/ Cancellation of a lease may indeed require resort to suit in the U.S. District Court where the leased lands are known to contain valuable deposits of oil or gas. 30 U.S.C. §§ 188(a), (b) (1988). Termination of a lease by operation of law, on the other hand, occurs automatically under the terms of the relevant statute in certain circumstances where the lessee fails to take the required action. See Oil Resources, Inc., supra.

10/ Environmental damage described in the affidavits include oil spills threatening drinking water aquifers for the City of Bakersfield and loss of wildlife resulting from open oil sumps. Also submitted was a copy of a letter of May 6, 1991, from the California Department of Conservation, Division of Oil and Gas, addressed to the California Regional Water Quality Control Board. The letter expressed the intent to "close and properly abandon two sumps on the Great Western Drilling * * * lease" citing oil sumps constituting a hazard to wildlife and oil spills posing a contamination threat to groundwater.

11/ The BLM decision of June 7, 1991, is quite clear on this point: "As to canceling the leases, the leases have not been cancelled. As previously mentioned the leases were issued for a term of ten years and so long thereafter as oil or gas is produced in paying quantities. The leases have simply expired by operation of law. For each lease, both the ten-year term and the following term for the period of production of oil or gas in paying quantities have ended. Therefore, the leases terminated pursuant to their own terms." [Emphasis in original.]

An oil and gas lease in its extended term by reason of production terminates by operation of law when paying production ceases on the lease subject only to three exceptions provided by statute. John S. Pehar, 41 IBLA 191 (1979); Universal Resources Corporation, 31 IBLA 61, 65 (1977). The relevant statutory provision is section 17 of the Mineral Leasing Act pursuant to which leases CAS 066405 and CAS 066405A were issued. Subsection 17(i) describes the circumstances under which leases which are in their extended term by reason of production will terminate automatically:

> No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this chapter. [Emphasis added.]

(30 U.S.C. § 226(i) (1988)). Appellant has asserted in the brief on appeal that the leases contain wells capable of producing oil or gas in paying quantities and BLM actions in this matter have been consistent with such a finding. Accordingly, the leases shall not expire because of the cessation of production unless the lessee fails to obtain production after being given 60 days' notice to produce. 43 CFR 3107.2-3. However, once this notice is given, the leases expire automatically by virtue of the terms of both the leases themselves and the statutory provision if production is not resumed.

[2] The second issue focuses upon whether BLM's decision violates the automatic stay provision of 11 U.S.C. § 362 (1988). The automatic stay provision reads in part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title * * * operates as a stay, applicable to all entities, of--
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> > (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before

the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
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> (3) any act to obtain possession of property of the estate or of property from the estate or to exer-cise control over property of the estate;
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> * * * * * * *
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> (b) The filing of a petition under section 301, 302, or 303 of this title * * * does not operate as a stay--
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> * * * * * * *
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> (4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
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> (5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

In response to appellant's statement that the automatic stay precludes BLM action, the agency argues that termination of oil and gas leases by operation of law is not a "proceeding" within the meaning of the statute. The automatic stay provision is, therefore, not applicable, BLM contends. In support, the agency cites In re Trigg, 630 F.2d 1370 (10th Cir. 1980).

Trigg was decided under law pre-existing the Bankruptcy Reform Act of 1978, from which the automatic stay provision, quoted above, is taken. 12/ At issue in Trigg was whether rule 11-44, a predecessor to 11 U.S.C. § 362(a) (1988), precluded termination of a BLM lease held by the debtor-lessee. Rule 11-44(a) provided that a petition in bankruptcy "shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, or the enforcement of any

12/ "Although Trigg was decided under the Bankruptcy Act, its holding is still valid." In re B&K Hydraulic Co., 106 B.R. 131, 134 (Bankr. E.D. Mich. 1989).

judgment against him * * *." In Trigg the debtor-lessee failed to make timely payment of its annual rent after filing a petition in bankruptcy. The terms of the lease and relevant statute provided that absent produc-tion, failure to pay the advance annual rental on time would automatically terminate the lease. See 30 U.S.C. § 188(b) (1988).

The debtor-lessee in Trigg argued, as does appellant herein, that the filing of a petition in bankruptcy automatically stayed termination of its Federal oil and gas lease. The court of appeals disagreed, however, and we find the court's reasoning persuasive here. The court found that the debtor-lessee's failure to tender the annual rental caused the lease to lapse automatically by its own terms. No proceeding was involved within the meaning of rule 11-44(a), the court held. To conclude otherwise, said the court, would enlarge the substantive rights of the debtor-lessee, contrary to the enabling statute. 13/

In support, the Trigg court looked to Good Hope Refineries, Inc. v. Benavides, 602 F.2d 998 (1st Cir.), cert. denied, 444 U.S. 992 (1979). There a private lease was found to have terminated automatically upon the debtor-lessee's failure to tender its rent on time. Lease rental was due just days after the debtor-lessee had filed its petition in bankruptcy. When rent was not paid timely, no "proceeding" was involved to effect termination, the court held. See also In re Gull Air, Inc., supra at 1262 (Debtor's airport arrival and departure slots automatically withdrawn for nonuse following bankruptcy petition - no violation of 11 U.S.C. § 362(a)(1) or (a)(3) (1988)); In re B&K Hydraulic Co., supra at 134 (Insurance policy terminated automatically upon debtor's failure to pay premiums timely); and In re P.I.N.E., Inc., 52 B.R. 463, 465 (Bankr. W.D. Mich. 1985) ("[A] lease that expires by its own terms after the filing of the bankruptcy petition leaves nothing to assume or reject").

Upon review of the record, we draw these conclusions. Where, as here, the lessee of a non-producing oil and gas lease in its extended term fails to comply with BLM's 60-day notice, the lease terminates automatically by operation of law. Michael P. Grace, 50 IBLA 150, 151 (1980). The fact that the debtor-lessee has filed a petition in bankruptcy prior to BLM's 60-day notice does not preclude the expiration of the lease by reason of cessation of production pursuant to the explicit terms of the statute at 30 U.S.C. § 226(i) (1988). See Great Plains Petroleum, Inc., 117 IBLA 130 (1990). Automatic termination does not violate the stay provisions of 11 U.S.C. § 362(a) (1988) because termination occurs without either an "action or proceeding" within the meaning of section 362(a)(1) or an "act to obtain possession" under section 362(a)(3). Thus, we find that the termination

13/ The enabling statute referred to here is the Bankruptcy Act of 1898. In 1979, this Act was repealed by the Bankruptcy Reform Act, 11 U.S.C. § 101 (1988), also called the Bankruptcy Code. Like its predecessor, the Bankruptcy Code does not create or enhance property rights of a debtor. In re Gull Air, Inc., 890 F.2d 1255, 1261 (1st Cir. 1989).

of an oil and gas lease in its extended term by reason of production upon the failure of the lessee to produce the lease after 60 days' notice is not barred by the automatic stay of section 362(a).

[3] There is a further issue in this case, however, presented by the explicit terms of the order of the bankruptcy court dated January 7, 1987, confirming the debtor's plan of reorganization. The bankruptcy court order expressly barred Departmental officials from requiring the debtor to post additional bond coverage as a condition of operation of the lease wells. Although both BLM and the U.S. Attorney have questioned whether the United States was a party to the case and, hence, subject to the jurisdiction of the court, no evidence to this effect has been presented. Indeed, copies of certain portions of the proceedings before the bankruptcy court provided as a supplement to the record tend to show the contrary. It appears that an order dated August 13, 1985, notifying creditors that an order for relief of the debtor pursuant to chapter 11 of the Bankruptcy Code had been entered and further notifying them of the automatic stay of certain proceedings under section 362 of the Code was served by mail on the "United States BLM Royalty Management Program" at the Denver mailing address of MMS. See note 7, supra.

The Bankruptcy Code provides that the effect of confirmation of the plan in bankruptcy is to make the provisions of the plan binding on both the debtor and the creditors. 11 U.S.C. § 1141(a) (1988). Except as otherwise provided in the plan or in the order confirming the plan, confirmation of a plan discharges the debtor from debts that arose before the date of confirmation. 11 U.S.C. § 1141(d)(1) (1988); 9B Am Jur 2d, Bankruptcy, § 2515 (1991). Although the plan as approved by the bankruptcy court is not before the Board, it is clear from the terms of the order of January 6, 1987, confirming the plan that BLM has been barred from conditioning production of the lease wells on provision of increased bonding. 14/ As we held in our prior decision in this matter, BLM is vested with the authority pursuant to regulation to increase the amount of bond coverage required of an oil and gas operator. 43 CFR 3104.5; Pardee Petroleum Corp., supra at 22. Subsequent to the filing of a petition in bankruptcy by the lessee/debtor, however, the regulatory authority of BLM over bond coverage provides no basis to ignore an order of the bankruptcy court on matters within its jurisdiction. 15/ Accordingly, to the extent the BLM notice to produce the leases

14/ The amount of the increased bond coverage required by BLM was predicated on both unpaid royalty balances and the estimated costs of reclama-tion of the well sites. See Pardee Petroleum Corp., supra at 22-23. The court was apparently convinced that reclamation expenses were already covered by a $25,000 bond provided to a state regulatory agency. See Order of Jan. 6, 1987, at paragraph 10.

15/ Hence, we overrule our prior decision in this matter in part, to the extent inconsistent herewith.

within 60 days conditioned operations on provision of increased bond coverage, we must conclude this condition is barred by the order of the bankruptcy court. This requires that we set aside and remand the BLM decision holding the leases to have expired at the end of their extended term by reason of failure to produce within 60 days of notice to place the leases in production.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is set aside and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

I concur:

John H. Kelly
Administrative Judge